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**PROCUREMENT**

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## PROCUREMENT REQUIREMENTS

Sponsors must comply with existing federal, state and/or local procurement requirements. The underlying foundation of all procurement is that regardless of the method used, the procurement is conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of competitive restrictions include, but are not limited to:

- ✓ Placing unreasonable requirements on firms in order for them to qualify to do business;
- ✓ Procurement practices which encourage or foster noncompetitive practices, e.g. collusion between firms;
- ✓ Organizational conflicts of interest, which can occur when the individual(s) responsible for determining bid/proposal responsiveness can be overruled by another individual within the organization;
- ✓ Inappropriate practices such as entering into discussions with a firm prior to evaluating proposals; discussions with a bidder at anytime when the competitive sealed bid procurement method is used; providing only certain firms with the results of pre-bid meetings or releasing the contents of a bid/proposal to other bidders/proposal offerors; and
- ✓ Unnecessary experience and bonding requirements.

### Procurement Procedures

1. For purchases less than \$5,000 - bidding is not required, but sponsors should utilize procedures that provide adequate and reasonable competition.
2. For purchases between \$5,000 and \$15,000 – shall solicit at least three verbal quotes.
3. For purchases between \$15,000 and \$32,700 (\$35,000 for charter schools, if exempt, see note below)-shall solicit at least three written quotes.
4. For total annual purchases over \$32,700 (\$35,000 for charter schools, if exempt see note below)-shall solicit sealed bids or proposals through a competitive process.

**\*Note:** Charter schools that are considered exempt from state procurement rules are subject to federal procurement rules when making purchases over a set dollar threshold. Charters must utilize a Request for Proposal (RFP) or Invitation for Bid (IFB) if purchasing over \$100,000 from one vendor. If charters are procuring less than \$100,000 from a single vendor then the charter must obtain three price quotes from qualified sources.

## **TYPES OF PROCUREMENT**

The two most frequently used methods of procurement are:

1. Competitive sealed bids, which use an Invitation for Bid (IFB), and
2. Competitive sealed proposals, which use a Request for Proposal (RFP).

Regardless of the method used, the sponsor must be able to provide a clear, complete, adequate, and realistic description of services/products desired under the contract.

### Competitive Sealed Bid/Invitation for Bid (IFB)

This method is appropriate when the sponsor wishes to have a fixed or firm price contract. This method of contracting shall not contain cost reimbursable provisions, including combinations of fixed fee and cost reimbursable provisions, even when those provisions contain a cap.

Factors to consider for competitive sealed bids are:

1. The sponsor has clearly identified what services/products it wishes to contract for;
2. The sponsor either does not wish or lacks the needed experience to negotiate price and contractual responsibilities with the contractor;
3. More than one contractor is willing and able to compete effectively for the contract;
4. Because the bid will be awarded to the lowest responsible and responsive company, the sponsor must include sufficient information in the IFB to allow the sponsor to determine whether the bid conforms to the IFB. The solicitation must include the services/products requirements identified by the sponsor and the minimum level of performance necessary.
5. The place and time the bids will be opened must be included in the invitation as well as any information concerning pre-bid meetings; requirements for bid and/or performance bonds (if applicable); the amount of the bond; requirements concerning the bonding firm, and when the bond(s) must be provided to the sponsor.

### Advantages of the Competitive Sealed Bid/Fixed-Price Contract

1. The contract may be prepared prior to soliciting bids. In some cases, the IFB along with the bidder's response becomes the contract. This generally allows the sponsor to more accurately estimate costs and identify staff resources that must be assigned to the food service operation well in advance of the effective date of the contract.
2. The pre-bid preparation of the contract permits the sponsor to arrange for its legal authorities to review the contract provisions for legal sufficiency without the pressures of negotiation.

3. Because the contract may be prepared prior to soliciting bids, the sponsor review of the contract is completed prior to announcing the IFB, thus allowing the sponsor to award the contract immediately after the bid opening, pending board approval, if applicable.
4. Fixed-price contracts permit the sponsor to identify anticipated revenues and expenses, as well as the total anticipated cost of the contract.
5. The sponsor is relieved from negotiating both the cost and responsibilities with bidders.

#### Disadvantages of the Competitive Sealed Bid/Fixed-Price Contract

1. If the bid document does not clearly identify the services/products requested, the bid prices and the services/products provided by the contractor may not be reasonable or reflective of the sponsor's needs.
2. During periods of rapidly rising prices, prospective bidders may decline to bid on a fixed-price basis or bid overly high. In situations where prices are declining, fixed-price contracts do not allow the sponsor to benefit from the decline. Therefore, it may be advantageous for a short-term contract of less than a year for commodities such as milk and paper.

#### Competitive Sealed Proposal/Request for Proposal (RFP)

This method is appropriate when the sponsor has identified what it expects a contractor to accomplish, but has not identified how it will be accomplished. Competitive discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award.

Factors to consider for using competitive sealed proposals are:

1. The sponsor must possess the technical skills necessary to evaluate the proposals and negotiate with the offerors.
2. The sponsor's legal authority must be available to assure that the proposed contractual language reflects the agreement reached between the successful offeror and the sponsor.
3. Under a cost reimbursable contract, the sponsor must independently monitor the costs incurred under the contract for compliance with the appropriate federal rules and regulations.
4. The criteria used to evaluate the proposals must be carefully prepared and included in the RFP. These criteria must be followed in evaluating the proposals.
5. The due date for proposal submission must be included in the request as well as any information concerning proposal meetings, if a performance bond will be required, the amount of the bond, and any requirements concerning the bonding firm, if applicable.

### Advantages of Competitive Sealed Proposals/RFP

1. Allows the sponsor to decide whether or not the contractor should perform certain functions based upon the responses received from the offerors.
2. RFPs which result in cost reimbursable contracts allow the sponsor to take advantage of price fluctuations during periods of falling prices.
3. Allows more flexibility in selecting a contractor because the sponsor is not limited to selecting the offeror which submits the lowest price.

### Disadvantages of Competitive Sealed Proposals/RFP

1. The monitoring of revenue and expenses under the contract will be more complicated.
2. The contract may be based upon the discussions. A contract with a food service management company shall not be executed until approved by the ADE/Health and Nutrition Services office.
3. The discussion process requires that the sponsor possess experience and skill in contracting and financial management. Attempting to negotiate without the needed expertise can result in the sponsor entering into a contract which meets regulatory requirements, and is fully enforceable, but can cause financial, administrative or personnel problems for the sponsor.
4. Since the sponsor, if not clearly identified in the proposal, may have to perform certain functions, thus causing the sponsor to incur duties and related costs not planned or budgeted.

## **PURCHASING METHODS**

### Line Item Purchasing

This method is commonly used in food service. A buyer requests bids on a line by line basis, at a fixed price for deliveries to be made over a period (usually one to three months), after which bids are solicited again. This is often referred to as "Formal Bid Against Specification."

### Purchasing by Item Groups

Buyers may purchase supplies in item groups at fixed prices. Items are best grouped according to sources of supply. Traditionally produce, milk, ice cream, and bread are purchased in separate groups to accommodate firms who specialize in each of these product lines. Milk, ice cream and bakery products are usually purchased on annual contracts. Other item groups, i.e., canned and frozen fruits and vegetables are purchased for shorter time periods. Bid awards are made on the basis of bottom line per group.

### Lump Sum Purchasing

Sponsors with warehouses commonly use lump sum purchasing. Items are purchased on a line item basis for lump sum delivery. Bids stipulate the purchase of specific amounts of each item or fixed prices for one, two or three delivery dates. Deliveries are often made on exchangeable pallets. Often the lump sum is bought directly from the packer.

## **FOOD PURCHASED FOR SCHOOL FOOD SERVICE PROGRAMS**

All purchased food and USDA donated foods are the property of the National School Lunch Program and/or the School Breakfast Program. Food (including leftovers) and goods may not be removed from the school by employees. Purchased and donated foods lost through theft, destruction or spoilage may not be claimed in the cost of operation. Notify police if there is a USDA donated food theft. See *Loss, Spoiled, or Damaged Commodities*, Section 14.

### Purchasing For Personal Use

The food service operation should be operated in a businesslike manner. The money received as reimbursement for these programs is public tax money. Therefore, food service employees are subject to scrutiny from taxpayers.

The ADE/Health and Nutrition Services office discourages sponsors from allowing employees to purchase food or supplies for personal use from school vendors since:

- It could be a conflict of interest
- It could be unfair competition
- It could be considered a special benefit
- It could appear to be theft from the school

### Procurement Code of Standards

Sponsors must establish procedures for the purchase of food, supplies, equipment and other services with program funds. This is to ensure that materials and services are obtained efficiently, economically and in compliance with federal, state and/or local laws. Public schools and Charters, unless exempt, must follow procedures as prescribed in the Arizona School District Procurement Code. There are different procurement requirements depending on whether the annual aggregate value of the purchase or commodity is over \$32,700 (\$35,000 for charter schools, unless exempt) or not. However, if the annual aggregate purchase is below these thresholds then refer to either in the *Uniform System of Financial Records for Arizona School Districts* III-G-8 or the *Uniform System of Financial Records for Arizona Charter Schools* VI-G-7 and 8.

The written code of standards must address the following:

1. The sponsor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors.
2. Penalties or other disciplinary actions will be applied for violation of the above.

See Exhibit A for a sample *Procurement Policy, Code of Standards*.

## **BUY AMERICAN REQUIREMENT**

Sponsors participating in the National School Lunch Program shall purchase, to the maximum extent practicable, domestic commodities or products. A domestic commodity or product is defined as, *“An agricultural commodity that is produced in the United States; and A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.”*

Two situations permit purchases of foreign products: 1) the product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; and 2) competitive bids reveal the cost of a U.S. product is significantly higher than the foreign product. Subject to these two exemptions, purchases must at least be proportionate with the extent of Federal funding in the school food service account.

To ensure products are of U. S. origin sponsors should:

- check their purchasing specifications,
- remind their vendors and distributors of the “Buy American” requirement, and
- examine product packaging for country of origin. The *Nutrition Labeling and Education Act of 1990* mandates that the country of origin for both domestic and imported food products be identified on the product labels.

The “Buy American” requirement benefits children by ensuring that high quality foods are available in school meal programs and supports American agriculture.

## **Procurement Policy**

### **Code of Standards**

#### **(SAMPLE)**

Any officer, employee, or agent of the (Local Education Agency), who has occasion to handle school food or monies, shall perform his/her duties in a manner consistent with good business practices. This shall include prohibition of:

1. Solicitation or acceptance of gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
2. Participation in awards or administration of contracts to firms in which the employee, or any member of his/her immediate family, has financial or other interest.

Where financial interest is not substantial, or the gift is unsolicited and of nominal intrinsic value, such interest shall be documented and approved by (Local Education Agency), before acceptance.

Penalties or other disciplinary actions for infractions of this policy will be based on the seriousness of the violations. Disciplinary actions may include, but are not limited to:

1. Written disciplinary report filed individual's personnel file;
2. Suspension of duties;
3. Termination of employment;
4. Prosecution by legal authorities.

#### **Distribution Instruction**

This policy shall be incorporated into the General Operation Policy Manual of the (Local Education Agency), dated \_\_\_\_\_, and shall be reviewed annually by the Executive Director or School Board. Copies of this policy are to be distributed to all personnel who have occasion to handle school food, monies, or supplies, together with their supervisors and program directors.

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Signature